

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF NEW JERSEY

3
4 **IN RE: VALSARTAN PRODUCTS**
5 **LIABILITY LITIGATION**

CIVIL ACTION NUMBER:

19-md-02875

6 **DISCOVERY CONFERENCE VIA**
7 **ZOOM**

8 Mitchell H. Cohen Building & U.S. Courthouse
9 4th & Cooper Streets
10 Camden, New Jersey 08101
September 7, 2023
Commencing at 2:03 p.m.

11 **B E F O R E:**

THE HONORABLE THOMAS I. VANASKIE (RET.)
SPECIAL MASTER

12
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ALSO PRESENT:

Larry MacStravic, Courtroom Deputy

1 (PROCEEDINGS held via Zoom before The Honorable
2 SPECIAL MASTER THOMAS I. VANASKIE at 2:03 p.m.)

3 SPECIAL MASTER VANASKIE: Good afternoon, everybody.

4 RESPONSE: Good afternoon, Your Honor.

5 SPECIAL MASTER VANASKIE: Are we ready to get
6 started?

7 MR. STANOCH: From plaintiffs' perspective, I think
8 so, Judge.

9 And before we start, I'll just add -- this is David
10 Stanoch, obviously -- I apologize in advance, Your Honor, I
11 have an oven repair that's happening right now in my home.
12 And if I have to step away to make sure we don't blow up here,
13 I may do so, so I apologize in advance.

14 SPECIAL MASTER VANASKIE: Yes, step away.

15 MR. STANOCH: Thank you.

16 SPECIAL MASTER VANASKIE: All right. We will start.

17 You know the protocol: Please mute your mics unless
18 you're speaking, and identify yourself for Ann Marie, our
19 court reporter, so we get everybody correctly identified on
20 the record.

21 And we're ready to get started.

22 I think there are just two issues to address today,
23 but I wasn't certain of that, so I thought I'd ask counsel,
24 what are the issues you want to discuss today?

25 MR. GEOPPINGER: Your Honor, Jeff Geoppinger from the

1 wholesalers. My issue is I thought we had this conference on
2 August 23rd, with all due respect, Your Honor. We met, we
3 talked, we talked about the scheduling order. You asked the
4 plaintiffs to submit -- you actually asked me to submit the
5 scheduling order that we had attached to our proposal. You
6 asked the plaintiffs to submit competing dates for the order.
7 And the plaintiffs ignored that ruling and submitted a
8 counterproposal. That was not what was asked for.

9 The issues about fact sheets and partnering with
10 defendants, including pharmacies who haven't even been sued by
11 the third-party plaintiffs, was discussed. The order -- I
12 think the words you used were "we need an order that swings
13 both ways," and that is what we have prepared.

14 The plaintiffs have taken this opportunity to
15 completely revise that and submit it as a counterproposal.
16 They include very few dates that are applicable to them. They
17 in fact remove a number of things that were applicable to them
18 in the order that I sent to you for your instruction and that
19 was talked about with the plaintiffs before and that was
20 attached to our initial proposal and was discussed on 8/23.

21 So, Your Honor, from the wholesalers' perspective,
22 the order and the text of it I thought was a done deal and we
23 were just talking about dates.

24 The plaintiffs have come up with a new proposal, a
25 proposal that we don't agree with, in large measure because,

1 just candidly, to the surprise of no one, it limits their
2 obligations. First and foremost, they've just removed the
3 whole part about doing any custodial discovery. They've
4 included the stuff that they argued before about coordinating
5 with other defendants. As we said, we'd be happy to
6 coordinate where it's applicable and where we're able, but we
7 need to be able to -- the wholesalers have individual issues,
8 as the Court well knows, that we want to take discovery on.

9 The fact sheet situation, if there is a fact sheet,
10 that's fine; but this Court has allowed other requests for
11 production outside of the fact sheet context, both from
12 defendants to third-party plaintiff -- third-party payors and
13 from the plaintiffs to the defendants.

14 So, you know, we talked about this, and I think the
15 order that we came up with originally, the order that you
16 asked me to send to you, that's the order. And why -- I
17 understand the plaintiffs want to discuss dates, but that's
18 not what's been submitted.

19 And candidly, Your Honor, I think we should just
20 enter that order. And since they haven't asked for any dates,
21 we'll just include the dates that were already in. I would
22 request the Court to do that.

23 SPECIAL MASTER VANASKIE: Thank you, Mr. Geoppinger.
24 Are you addressing this, Mr. Stanoch?

25 MR. STANOCH: Yes, Your Honor. This is David

1 Stanoch. I'll address it for plaintiffs. And for more
2 granular issues that she handled, Ms. Burrows may join in as
3 well.

4 Suffice it to say, I disagree with Mr. Geoppinger's
5 characterization of what happened before Your Honor. We asked
6 Your Honor if we can submit a proposed schedule ourselves.
7 Your Honor allowed us to do that. And we did. So there's
8 nothing underhanded as he implies happening here at all.

9 In fact, Your Honor, we're the ones who asked for
10 this conference, because there was a number of things in their
11 proposed schedule which didn't come up at the last hearing and
12 that -- because we didn't have both sides' competing proposals
13 at that time. And we think it's really important for Your
14 Honor to address those before entering any order.

15 And our proposed order has dates. We took everything
16 you said, Your Honor, to heart. And we have dates, and we're
17 allowing two-way discovery. And we're not saying freeze and
18 pause everything for plaintiffs. We have dates. It's just
19 we're keying them off different ways.

20 There's three overarching issues, Judge, we want to
21 discuss today.

22 Number one is wholesalers' proposal after five years
23 in this case is overturning and disrupting the fact sheet
24 process that a lot of us, including myself, spent weeks
25 hammering out with Magistrate Judge Schneider. We're not

1 saying, wholesalers, you can't serve extra discovery. We have
2 dates in our proposal for that. All we're saying is the way
3 it has worked so far -- let me back up. I'll address the
4 three issues and then get into each one, Judge.

5 Number two, after the fact that the fact sheet and
6 the process that's in place already is being ignored by
7 wholesalers, the second issue we have is that they're
8 inserting things into their draft order, Judge, which multiple
9 jurists in this case have repeatedly said neither side gets to
10 do.

11 They throw in at the end of their list -- their
12 schedule, Judge, that they and only they get to serve RFAs and
13 interrogatories. Judge, it's been briefed numerous times that
14 Judge Kugler and Magistrate Judge Schneider have said many
15 times, no interrogatories.

16 I would have loved to have served interrogatories and
17 RFAs on wholesalers and manufacturers and retailers. And we
18 couldn't, because the Court -- the prior jurists and other
19 jurists said that the fact sheet is the vehicle, primary
20 vehicle for discovery.

21 So right off the bat they've tried -- if there's
22 anyone trying to pull a fast one, as Mr. Geoppinger is
23 suggesting, which I don't appreciate, I'd suggest it's not us.

24 And third, Your Honor, is that the wholesalers in
25 this schedule of theirs is attempting to do an end run around

1 prior orders of the Court, Judge Kugler and yourself, as
2 recently as Special Master Order 82 from a few days ago, by
3 reinserting into this, as they call it, losartan and
4 irbesartan schedule, putting in another bite at the apple that
5 they get valsartan discovery. And you'll see repeatedly
6 through their schedule that they want certain discovery and
7 requests as to valsartan and search terms as to valsartan and
8 depositions as to valsartan.

9 We're past that. We submitted 60 pages of briefing
10 to Your Honor on that. Your Honor issued a 15-page written
11 opinion. Right?

12 The fact that they're trying to put in all these
13 opportunities for them to get valsartan discovery, which they
14 didn't ask for in the last five years and we had to brief on a
15 period of two months and argue to Your Honor over the summer,
16 frankly, we think it's a waste of everyone's time and
17 resources.

18 Those are the three major issues, Your Honor: The
19 fact sheet process and procedure, the interrogatories and
20 RFAs, and their attempt to sneak valsartan discovery back in.

21 Before I stop, Your Honor, if I may, I just want to
22 go back to the fact sheet so you understand what I'm saying
23 about it.

24 We're not saying that there should be nothing else
25 after the fact sheet, not at all. But Your Honor may recall

1 or may not that there is a lot of dates that waterfall off the
2 fact sheet process.

3 The plaintiffs answer one Court-approved plaintiff
4 fact sheet. The answer to that triggers the retailers'
5 fact -- defense fact sheet responses. The date the retailers
6 serve triggers the wholesalers' obligations of their DFSs,
7 which in turn triggers the manufacturers' obligations under
8 the DFSs. That's why, with our schedule, we are only going to
9 need -- we have to -- we cannot answer multiple fact sheets,
10 one for wholesalers, one for retailers. I know Mr. Geoppinger
11 and his colleagues say, oh, we don't need to corral the
12 defendants.

13 I'm not saying you have to corral them, but the way
14 it works is we answer one document -- and the valsartan one
15 was a 94-page document. We answer that, and then we key other
16 dates, what they want, the wholesalers, off of our answers to
17 that.

18 So, for example, the TPP plaintiffs would answer the
19 new losartan and irbesartan fact sheet. Right? And then X
20 days off of that, they would answer any supplemental document
21 requests, similar to those that were allowed and agreed upon
22 for valsartan. Because what happened there, there's some
23 things, despite the parties' best efforts, that weren't
24 included in the fact sheet. So Judge Kugler and Judge
25 Schneider said, okay, you can serve some additional document

1 requests for things that were missed by the fact sheet.

2 We're just saying we should follow that same
3 procedure. Right now we don't know that we're going to have
4 to answer a fact sheet from wholesalers. We haven't heard
5 from retailers or manufacturers what they're doing with the
6 fact sheet for losartan and irbesartan. And in the midst of
7 all this, potentially one to three different fact sheet with
8 unknown implications for the defense fact sheets, they want to
9 start serving other RFPs on us.

10 And again, we're not saying they don't get to serve
11 other supplemental RFPs. We heard you. We're just saying
12 there's a lot of moving parts here. There was a tremendous
13 amount of effort that was put in at the beginning of this
14 case, and we think that should be followed here instead of
15 coming up with a schedule, which if this was a new case, TPP
16 v. Mr. Geoppinger's client, sure, maybe this works.

17 But that's not where we are today, Judge. We have a
18 five-year history in this case. And it's not just TPPs -- two
19 TPPs who are answering this. The fact sheet is answered by
20 dozens of other consumer and medical monitoring class reps and
21 all the personal injury reps. That's all happening at the
22 same time. So we think there has to be some consideration to
23 that.

24 SPECIAL MASTER VANASKIE: All right. Thank you,
25 Mr. Stanoch.

1 Mr. Geoppinger?

2 MR. HARKINS: So, you know, let me put it in context.

3 We are right now answering RFPs served by the
4 plaintiffs as to losartan and irbesartan unconnected with the
5 fact sheet, completely separate.

6 The requests for production we included in the
7 schedule that I sent to you are to the TPP plaintiffs, not
8 consumers, not individuals, okay. Just like the plaintiffs,
9 TPP plaintiffs are asking us and we are in the process of
10 answering right now.

11 There has been a history, it has not been tied to the
12 fact sheet all along, and the scheduling order that I prepared
13 or we prepared that we sent that you asked that we send, it's
14 a mirror image of what the plaintiffs are asking of us, a
15 mirror image.

16 For instance, Mr. Stanoch didn't mention it, but
17 there's a requirement for custodial discovery, custodial
18 discovery to us. And yes, as a matter of fact, the only thing
19 in that proposal I sent you that has anything to do with
20 valsartan, by the way, is custodial discovery to us the
21 defendants, us the wholesaler defendants. The custodial
22 discovery of plaintiffs is about losartan and irbesartan.

23 But my point, Your Honor, is they're mirror images.
24 It swings both ways.

25 We need a schedule that provides the wholesaler

1 defendants the same opportunity to take discovery from the
2 plaintiffs that the plaintiffs are getting to take from us.

3 And the plaintiffs have brought this case. They
4 chose to sue us. They have the burden of proof. They should
5 be required to engage in the same level of discovery that the
6 wholesalers are.

7 And if they are going to send us things like -- if
8 they're going to go into court and say, Judge, let us serve
9 irbesartan and losartan requests for production right now like
10 they did in April and like Judge Kugler let them do in CMO 32,
11 then why shouldn't we have the same opportunity to do that?
12 And that's what our schedule provides for. It provides for
13 those RFPs. It provides for those -- for that custodial
14 discovery.

15 With respect to interrogatories and RFAs, candidly,
16 we would need those because we haven't been able to get
17 straight answers out of RFPs about documents that they don't
18 have, so we're just going to ask them if they have them or
19 not. But if that's a problem for the Court and they want
20 to -- and we're limited at this point to RFPs, then that's
21 what we'll do. And then we'll establish that we can't get the
22 information that we need from these TPPs about their lack of
23 dealings with us through an RFP and then perhaps the Court
24 will give us leave to serve proper interrogatories.

25 But the big point here, Your Honor, is the schedule

1 that we submitted after this last conference when all of this,
2 by the way, could have been discussed, all of this could have
3 been discussed, the schedule that we sent mirrors what they
4 ask of us, so we are asking to have the same opportunities.

5 SPECIAL MASTER VANASKIE: You say it mirrors, but I
6 didn't see any requests for admissions from plaintiffs to the
7 wholesalers.

8 MR. GEOPPINGER: That does not, Your Honor. And as I
9 mentioned, that was on the issue of getting an answer -- a
10 straight answer on RFP about what they don't have.

11 But if the Court is not going to include that, then
12 fine, we'll operate without it. I will reserve the right to
13 come back and ask the Court for the ability to do some of that
14 discovery when the RFPs, as they have been in valsartan, are
15 unable to get -- we're unable to get, candidly, the answer we
16 need about whether there's been any dealings or not and
17 whether the TPP plaintiffs could actually positively ever
18 identify any transaction that ever involved the wholesaler
19 that they were engaged in. But we can -- we'll go through the
20 RFP process on that.

21 But with the exception of what you've identified,
22 Your Honor, it is a mirror image. We're just asking for the
23 same thing that the plaintiffs get with respect to the
24 wholesalers.

25 And importantly, Your Honor, I mean, custodial

1 discovery, the plaintiffs just took it out. And these are --
2 the TPPs, the third-party payors, are not individuals. These
3 are insurance companies, big insurance companies,
4 sophisticated insurance companies. They -- if the wholesalers
5 need to be doing custodial discovery, I think they do as well.
6 We'd like to ask some custodial discovery requests.

7 SPECIAL MASTER VANASKIE: Let me hear from
8 Mr. Stanoch on that point.

9 MR. STANOCH: Yes, Your Honor.

10 In terms of their proposed schedule seeking
11 valsartan, it says what it says. Your Honor can see they
12 sprinkled valsartan in throughout it.

13 I hear that they're willing to not have anything
14 about RFAs and interrogatories. I think that makes good
15 sense, given where everyone has been, the number of times.

16 And I can't stress enough, Your Honor, that this is
17 not a case in a vacuum. We're simultaneously negotiating
18 right now losartan and irbesartan schedules with what, another
19 eight or nine manufacturers, a number of -- maybe even more, a
20 number of which were not original defendants either in this
21 litigation, another eight or nine retailers for
22 losartan/irbesartan discovery. And there is a lot of
23 challenges on our end about some sort of three-way schedule
24 that we're going to have different tracks and it's not
25 combined. And in fact, issues regarding losartan and

1 irbesartan discovery as I understand it with other defendants
2 will be on the agenda for next week's CMC before Your Honor
3 and Judge Kugler.

4 So, again, we're not trying to say they don't get
5 discovery. We accommodate for discovery. That was the same
6 discovery that was had and allowed for valsartan.

7 Mr. Geoppinger makes a point about the custodial
8 discovery of the TPP plaintiffs. He's right, there was none,
9 because the 94-page fact sheet was decided to be the discovery
10 that would be done of the named TPP plaintiffs. That's why
11 our schedule mirrors what was done before. And no one up
12 until August 2023 ever said that they need additional
13 discovery beyond all the fact sheets and three sets of
14 discovery document requests they've served on MSP and MADA to
15 get it. Right.

16 So that issue could have been briefed over the summer
17 in our prior arguments about custodial discovery. They didn't
18 raise it, I didn't see it.

19 But to us, that's just one little minor issue on the
20 fringes of the fact that there's so many moving parts here,
21 Your Honor, we can't be -- we need clarity to know this is the
22 fact sheet we're answering, however big it is, and then what's
23 going to follow after that. It's impossible. We have, oh,
24 well, there's a wholesaler fact sheet now maybe that we answer
25 that on date X. Then there's one on date Y for manufacturers

1 and one on date Z for retailers. It's just untenable. And
2 it's not what happened before, and the work was put in to
3 smooth that over, and that's why we're just trying to key the
4 dates off of these things.

5 And yes, the losartan and irbesartan discovery is
6 new. Mr. Geoppinger is right. Yes, because that's what Judge
7 Kugler's asked us to do in the spring, to start getting going
8 on this. And so we have teams siloed on our side talking to
9 every distribution level of defendant trying to work on all
10 these things simultaneously.

11 So we're not trying to stymie Mr. Geoppinger and the
12 wholesalers, but I think it has to be appreciated that we have
13 tripartite obligations to deal with all of these parties and
14 to do it in a unified, cohesive way for the benefit of the
15 Court and the overall litigation.

16 SPECIAL MASTER VANASKIE: All right. I was hoping we
17 could avoid going item by item through the competing
18 proposals, you know. I was happy when you said there were
19 three -- divide the matter into three issues, but I don't how
20 I'm going to avoid going through this item by item.

21 I'm looking at the competing proposals now. And I
22 just want to get this -- get this resolved, make decisions and
23 get you an order so that this can no longer be an impediment
24 to discovery moving forward with respect to losartan and
25 irbesartan.

1 So having said that, I think what I'm going to do
2 is -- hopefully it will go quickly or we'll make progress and
3 we can resolve things. Based upon determinations I make, we
4 can agree that certain other dates can be set.

5 But I'd like to go through where there are
6 differences between the proposals that were submitted to me to
7 see if we can resolve them. Or if we can't resolve them in an
8 agreement, then I'll make decisions. It's not rocket science
9 here. It's just setting deadlines and deciding the scope of
10 discovery.

11 So the first area of discrepancy I see deals with the
12 wholesalers' proposal. It's the second item on the first
13 page, that wholesalers shall serve RFPs and Rule 30(b)(6)
14 notices to TPP class representatives and assignors. There's a
15 date of August 4th that's long since passed.

16 So has that been taken care of?

17 MR. GEOPPINGER: We served them.

18 SPECIAL MASTER VANASKIE: Okay. So they're out
19 there.

20 So what needs to be done on that, Mr. Geoppinger?

21 MR. GEOPPINGER: I believe there's a date in our
22 proposal for the plaintiffs to meet and confer with us about
23 those and to work through those and see if we can have
24 agreement. And if that doesn't work, then we make our
25 submissions to the Court on what we can't agree to.

1 I think that date was -- sorry, I'm looking at it
2 here.

3 Okay. So we have plaintiffs serving a response to
4 those on September 27th.

5 And then we had deadline of 10/9, I believe, to --
6 for us to file anything with respect to any disputes we have
7 after we met and conferred.

8 SPECIAL MASTER VANASKIE: Now, I do like having dates
9 certain. I like that approach rather than keying off events
10 and running deadlines from those events.

11 So let me ask Mr. Stanoch, why not have your
12 responses due on the 27th of September with motions filed by
13 October 6th, if I have those dates right?

14 MR. STANOCH: For the record, Your Honor, I will just
15 say that it's been the process in this case that parties don't
16 just serve discovery as they wish, that the parties provide
17 draft discovery and then they talk, and then disputes are
18 brought to the Court, Your Honor and Magistrate Judge
19 Schneider. And then the final set is answered, not so much
20 serving objections. But that's form over function. But I did
21 want to note it, that we were trying to hew to what's been
22 done for years.

23 But the issue with that, Judge, is, so we're going to
24 be objecting and responding to what's supposed to be
25 supplemental document requests in addition to the fact sheet

1 before we have a finalized losartan and irbesartan fact sheet
2 under their schedule. And that doesn't make any sense to us.
3 Right? Because a lot of what's in the fact sheet, right, is
4 going to be responsive potentially to other requests. So
5 that's why we say the supplemental requests should in fact be
6 served and handled supplementally to the fact sheets, because
7 if there's anything not incorporated by the fact sheet, that
8 was the idea behind them. Otherwise, right now we're going to
9 have an argument in about a month on a set of RFPs, and I
10 don't even -- before we answer a fact sheet. And, frankly, I
11 don't even know if we'll have a losartan and irbesartan fact
12 sheet answered.

13 So it's sort of -- in the rush to get us to answer
14 these RFPs, we're bypassing all of the work, all of the data,
15 all of the document requests, all of the written questions and
16 written answers we'll be providing in the fact sheets. And
17 it's inverted. You answer the fact --

18 SPECIAL MASTER VANASKIE: What you're saying makes
19 sense to me, but what's the deadline for you to respond on the
20 fact sheet? So what is the deadline for there to be agreement
21 about what the components of the fact sheet are?

22 MR. STANOCH: I think that that's a key issue, Your
23 Honor, that we in our schedule had a deadline, which has since
24 passed, for wholesalers to propose amendments to the TPP
25 valsartan fact sheet -- for losartan/irbesartan. Right? On

1 the first page of ours, we said September 5th, give us what
2 you think the new losartan and irbesartan fact sheet for TPP
3 should look like. I may be mistaken, I don't think we got
4 anything from them. In fact, no defendant to my knowledge --
5 I could be wrong for our side, but to my knowledge, no
6 defendant had said, here's a redline of the valsartan fact
7 sheet for TPPs or any plaintiff, this -- this is what we think
8 you should add for losartan and irbesartan or change it.

9 We're just waiting for that. And we're happy to
10 address it and do it quickly. I mean, we said we'd have it --
11 you know, we'd start doing that in our schedule -- we said we
12 would get through that, you know, in the first couple weeks of
13 September we were hoping. But their schedule doesn't even
14 have anything about their proposals to the fact sheet, I
15 think, when the fact sheet would be entered. So that's why
16 we're so confused.

17 And I feel bad making this such a ball of yarn,
18 Judge, but that's why, you know, Mr. Geoppinger says, just
19 serve the RFPs and we'll argue it and then October 3rd Judge
20 will make a decision.

21 We don't even have the first basic document set or
22 any defendant's proposed edits to it for losartan and
23 irbesartan. We're happy to hit the ground running right after
24 that is all figured out. And we say, let's do it quickly.
25 Let's do it now, in September. But there's nothing about the

1 PFS in their schedule, and that's our fundamental problem.

2 SPECIAL MASTER VANASKIE: All right. Let's hear from
3 Mr. Geoppinger.

4 Mr. Geoppinger --

5 MR. GEOPPINGER: I mean, I think we've talked about
6 that quite a bit. We talked about it on 8/23. And there's
7 nothing -- we're answering RFPs right now, the defendants
8 right now, the wholesalers. No fact sheet, we're answering
9 the RFPs, just like the plaintiffs asked for and which was
10 inputted in CMO 32.

11 I don't understand why the plaintiffs insist that
12 they can't be held to the same standards that we are. I just
13 don't understand it.

14 MR. STANOCH: May I, Your Honor?

15 SPECIAL MASTER VANASKIE: Yes, you may, Mr. Stanoch.

16 MR. STANOCH: The requests that they're answering now
17 are the Court-ordered requests where we changed the word
18 "valsartan" to "losartan and irbesartan," more or less. We're
19 not trying to hold anyone to different standards. And
20 they're the -- and that's why Magistrate Judge Schneider also
21 let us get certain discovery from defendants sufficient to
22 show the data on the sales and which -- who had what drugs and
23 sold to whom, because that was what Magistrate Judge Schneider
24 said is core discovery. He never said an email search of
25 assignor number 1's custodian number 2 is core discovery.

1 That's why we're moving on these other issues. And that's
2 what Judge Kugler told us to do in the spring.

3 MR. GEOPPINGER: Core discover for us, Your Honor, is
4 getting the TPP plaintiffs to tell us if they have any
5 information that ties any of the transactions that they paid
6 for to any of the wholesalers. That's core discovery.

7 And by the way, again I'll mention, they sued us and
8 they have the burden of proof on that. That's as core as it
9 gets. We've been chasing that in valsartan. Mr. Stanoch, as
10 you know, agreed to provide some of that to us. We lost on
11 all the other requests. I'm still waiting to get that
12 information. But that's about as core as it gets I think in
13 terms of the case, and that's exactly what our RFPs ask for,
14 the very first one.

15 MR. STANOCH: If it was so core, they could have
16 asked for it five years ago. We argued this already, Judge.

17 I apologize. I apologize.

18 MR. GEOPPINGER: I'm asking for it with losartan and
19 irbesartan right now.

20 SPECIAL MASTER VANASKIE: This shouldn't be this
21 difficult. I'm having trouble finding -- trying to --

22 MR. GEOPPINGER: Your Honor, it's because the
23 plaintiffs are insistent upon the fact sheet process. We're
24 not opposed to the fact sheet process, but we have -- we have
25 been subjected to RFPs outside the fact sheet process.

1 Mr. Stanoch acknowledged this Court has required the
2 plaintiffs themselves, the TPP plaintiffs, to answer RFPs
3 outside of the fact sheet process. So our schedule provides
4 for us answering their RFPs and them answering our RFPs.

5 SPECIAL MASTER VANASKIE: What does your schedule,
6 Mr. Geoppinger, provide with respect to the fact sheets?

7 MR. HARKINS: It doesn't provide anything with
8 respect to the fact sheets, Your Honor. If there's going to
9 be a fact sheet negotiated, as Mr. Stanoch noted, they
10 negotiate that with the manufacturers, we'll participate in
11 that.

12 But the specific RFPs that the wholesalers need that
13 we're looking to get answered don't need -- we don't need to
14 wait on the fact sheet to have them begin answering them.
15 They didn't ask us -- we didn't ask them to wait on their fact
16 sheet to us.

17 And by the way, there is no fact sheet approved
18 current, so -- on losartan and irbesartan.

19 MR. STANOCH: That's right.

20 MR. GEOPPINGER: But the RFPs have been consistently
21 answered without any connection to the fact sheet on both
22 sides of the fence.

23 SPECIAL MASTER VANASKIE: Mr. Stanoch.

24 MR. STANOCH: I strongly disagree with that, Your
25 Honor. We just heard Mr. Geoppinger say his schedule has

1 nothing at all with the plaintiff fact sheet. I think I heard
2 him suggest that there's been no discussion amongst his
3 defendants and the other defendants about what may happen
4 there on the fact sheet.

5 People have not served RFPs willy-nilly in this case.
6 That's never happened in five years. We tried to do that,
7 plaintiffs, in the beginning. They were stricken. They were
8 removed. And we were told, you're going to go through the
9 fact sheet and then you have draft requests that you propose
10 to the defendants, and then you talk about it, and you bring
11 those draft disagreements to the magistrate judge.

12 I don't understand why we're firing from the hip to
13 let wholesalers serve a set of RFPs, which we're saying they
14 could do -- they'll be able to do, but why is this cart going
15 before the plaintiff fact sheet horse? I haven't heard an
16 answer for that, other than them to say, oh, it's information
17 we want. Sure, we're going to give you the data with the fact
18 sheet. That's what happened in valsartan. All the data. And
19 then you said you want more.

20 We'll give you -- the other data we've agreed in
21 three separate sets of requests after the fact sheets in
22 valsartan to all the data the defendants wanted as recently as
23 two weeks ago.

24 SPECIAL MASTER VANASKIE: All right. Well, it seems
25 to me that a process had been established in this matter to

1 use these fact sheets as opposed to standard discovery
2 requests to get through initial discovery, and it seems to me
3 that that process should again be followed here.

4 Supplemental requests for production of documents
5 certainly can be allowed, will be allowed. But let's -- I
6 think we should stick with what had worked in the past, and
7 that was the fact sheet process. And then we go from there.
8 There will not be interrogatories. There will not be requests
9 for admissions. Things will be handled through the fact sheet
10 process.

11 Now, the problem I'm confronting is that you haven't
12 agreed on what constitutes the fact sheets, what has to be
13 provided now based upon these fact sheets. And I'm struggling
14 to understand why that cannot be hammered out. And then, as
15 you did before, if there are any disputes, you submit them for
16 resolution.

17 I don't see what's unfair about that or why that
18 handicaps the wholesalers, but maybe, Mr. Geoppinger, you can
19 persuade me otherwise.

20 MR. GEOPPINGER: Well, the fact sheet, Your Honor,
21 process is, you know, as I've said, is separate and apart from
22 us serving our own requests for production, just like the
23 plaintiffs have kept it separate and apart from them serving
24 us. I think that that swings both ways, like you said.

25 And, sure, there can be a fact sheet. That's going

1 to be a fact sheet that has to be negotiated between -- you
2 know, I'm sure the plaintiffs are going to want the
3 manufacturers and the wholesalers and everybody to get
4 together and put all their requests in there and all these
5 questions in there and serve them on the TPP plaintiffs and
6 with whatever -- you know, I guess there will be requests for
7 production attached to them. And they'll want that.

8 As they told you -- I mean, they said it last time on
9 August 23rd, they say it again here in their proposal, and
10 they acknowledge it, that's a process that the defendants are
11 going to have to get together and do and serve upon them.

12 Our position as wholesalers has been, fine, that will
13 happen, okay, but it doesn't mean that the wholesalers can't
14 serve requests for production on very -- issues very unique to
15 them, just like the plaintiffs have done to us.

16 And so I hear what you're saying, Your Honor, but I
17 don't think we should be prohibited from moving forward with
18 some requests for production on the TPP plaintiffs from the
19 wholesalers right now. I just don't see that it needs to wait
20 on the fact sheet process. And candidly, I'd be concerned
21 that I'm going to hear something about a waiver argument
22 later, because that's what I've heard a lot about lately. And
23 that's what -- I'm trying to get out in front of it, Your
24 Honor.

25 And also I will mention -- and this is very

1 important -- custodial discovery was not part of what happened
2 before. The plaintiffs -- as to the wholesalers either.
3 There was no custodial discovery from us until very recently.
4 Till CMO 32 there was nothing to the wholesalers.

5 Well, we're in -- now there is. And it has to do
6 with losartan and irbesartan and in valsartan even. And we
7 are asking for custodial discovery as to the plaintiffs. And
8 Mr. Stanoch, as he mentioned, that never happened.

9 So this fact sheet process, that doesn't even begin
10 to address that issue.

11 And we need -- we need an acknowledgement that
12 it's -- you know, if they're going to be able to take
13 custodial discovery from us, we think the scheduling order
14 should give us the opportunity to take custodial discovery
15 from insurance companies who sued us.

16 SPECIAL MASTER VANASKIE: Why shouldn't that be the
17 case, Mr. Stanoch?

18 MR. STANOCH: Your Honor, again, the fact sheet
19 issue, I think we're getting to where we need to be. Again,
20 just -- we're not saying Mr. Geoppinger's clients can't serve
21 RFPs, we're just talking about the timing of it. I think
22 everyone on this call understands what's going on with that.

23 On the custodial discovery issue, we're really
24 meshing some different discovery histories in this case. And
25 I hate to belabor it, but years ago we sought custodial

1 discovery of both sets of downstream defendants. We were told
2 no, don't do it yet, do it later, focus -- these are --
3 manufacturers first for custodians. I'm paraphrasing, of
4 course.

5 And the defendants have put on the record how they
6 view this. And they said, just focus on noncustodial
7 requests. And the requests entered by Magistrate Judge
8 Schneider specifically said they're noncustodial, because
9 that's what he asked us to do. And when we argued that to him
10 in the summer of 2020 when I argued it, I said, okay, we're
11 deferring our custodial discovery. Right?

12 Waited until after class certification, CMO 32 comes
13 down. We said, okay, these are the CMO 32 items, as Your
14 Honor will remember, for valsartan.

15 So once we start talking valsartan custodial
16 discovery of wholesalers, it arose that said, hey, Judge
17 Kugler also wants us to be talking about all losartan and
18 irbesartan discovery, so we started talking about all three at
19 once.

20 But I think it's important to remember, Judge, that
21 there was never some recognition or -- actually, there was
22 never even a request from wholesalers or anyone else for
23 additional custodial valsartan discovery of the TPPs. They
24 got a little miffed that they had to do it. And then we
25 briefed that, Your Honor. And now they want to put reciprocal

1 discovery pressure on the TPPs.

2 So I'm not saying our position is no to it, but it's
3 sort of an end run around what happened in valsartan, where it
4 was never ordered or allowed, because the idea was the fact
5 sheet was going to allow for that, for all the questions you'd
6 ask and things of that nature.

7 No one, Mr. Geoppinger or anyone else, ever said we
8 want, you know, TPP custodians for five years on valsartan,
9 and now all of a sudden here we are in September 2023, they
10 not only want custodians for the TPP plaintiffs but they
11 actually want it for all three drugs, including valsartan.

12 So I would suggest that that issue, no waiver from
13 Mr. Geoppinger. He put it on the record. I'll say it right
14 now, I'm not going to argue it was a waiver of that. We can
15 hammer that out. But let's get -- let's get the fact sheet
16 and RFP schedule set. And then in the context of the RFPs, we
17 can figure out the custodial situation.

18 That's what I would say. I don't know if we need to
19 decide that right now. I think it's more important for
20 everyone to know where we're starting from so then we can know
21 where we're going.

22 THE COURT: All right. Mr. Stanoch, I appreciate
23 your arguments.

24 Mr. Geoppinger, why don't we proceed in that manner,
25 where you hammer out the fact sheet and you'll get your

1 discovery? I know you feel it's unfair, but --

2 MR. GEOPPINGER: Is -- I'm sorry.

3 SPECIAL MASTER VANASKIE: No, go ahead.

4 MR. GEOPPINGER: Well, you know, I hear what you're
5 saying, Your Honor. And then I would propose that -- you
6 know, we can do this. We've talked with Ms. Burrows. And we
7 came up with dates, and we're doing things. You know, we've
8 been doing things now.

9 And now the plaintiffs come in and say, we don't have
10 to do anything. Let's have a fact sheet. We'll negotiate
11 that. And we'll have some RFPs, and maybe later we'll talk
12 about custodial discovery later after that. But you didn't
13 ask about it five years ago, so we might argue my waiver
14 somewhere. We've heard that before.

15 Here's what we should do, Your Honor. If Your Honor
16 is going to require us to not be able to get any RFPs served
17 before a fact sheet, then I would propose that the discussions
18 we have where the wholesalers are going through all this
19 process now, which was my scheduling order that I submitted
20 that has dates for us to do things in it, I would suggest
21 that -- the Court hasn't entered that, that we all agree that
22 we're putting that to the side, and we're just going to go
23 back with your directive here about a fact sheet, and we'll
24 negotiate -- we'll kind of have to start from scratch and come
25 up with a proposal about how we should move through discovery

1 with respect to both the wholesalers and the plaintiffs in
2 this respect.

3 And it's going to involve -- a fact sheet process is
4 going to involve the other defendants. There's no way around
5 that. That has to -- I'm sure the plaintiffs wouldn't want it
6 to be. They don't want three fact sheets. Mr. Stanoch said
7 that very thing. And I don't think we want to have to put
8 three fact sheets together.

9 But I think -- you know, one of my concerns now is
10 hearing the plaintiffs' arguments and the Court's inclination
11 now to not let us serve RFPs absent the fact sheet process
12 going forward, that the defendants shouldn't be in the
13 position where we're doing custodial discovery and the
14 plaintiffs come here and say, we'll talk about that in a
15 couple months.

16 I think we should remove the order -- there isn't an
17 order in place, actually, but the -- we were hoping to get
18 one, having agreed to a bunch of stuff, but that we should be
19 now put in a position where we're having to move forward with
20 all of this while we're wondering what the plaintiffs'
21 discovery is going to look like.

22 So I would suggest I guess at this point the
23 parties -- I guess the defendants will have to get together,
24 and I'll have to contact the manufacturers and make sure
25 everybody is on the same page. And candidly, there's been a

1 lot of -- I think there's been a lot of work done on the fact
2 sheet actually already. And we'll coordinate in that respect
3 and move forward from there with respect to the plaintiffs.
4 And with respect to the defendants, I think we have to --
5 wholesaler defendants, I think we need to circle back with the
6 plaintiffs and put that schedule together.

7 I don't think the schedule we have right now that we
8 previously agreed to on the understanding that they were going
9 to basically be doing a mirrored schedule with us is really
10 tenable for us or candidly fair for us to be engaged in.

11 SPECIAL MASTER VANASKIE: Well, it doesn't seem fair,
12 I agree with you on that.

13 MR. STANOCH: May I, Your Honor?

14 SPECIAL MASTER VANASKIE: Yes.

15 MR. STANOCH: I think what I'm hearing is
16 Mr. Geoppinger saying the wholesalers should not have to do
17 losartan and irbesartan custodial discovery if we have to do a
18 fact sheet and there's sort of going to be some reciprocal
19 deadlines for plaintiffs to be determined.

20 I think I'm okay with that. I mean, I would confer
21 on my side, but that doesn't strike me as patently
22 unreasonable. I'd just say, you know, a couple things.

23 I'd say, number one, again, this is
24 losartan/irbesartan. There's also the CMO 32 valsartan
25 discovery ordered months ago which has been part of the

1 discussion because it overlaps, but it's a separate track.
2 And that should continue still, regardless of what happens
3 with losartan/irbesartan, number one.

4 And number two, I'd want to think about in the
5 interim, while the parties negotiate the fact sheet, if
6 there's certain things reciprocally, such as data, both
7 wholesalers' data and TPPs' data, that the parties could
8 informally or otherwise exchange to help them get their hands
9 around things while the nitty-gritty of the fact sheets are
10 being changed.

11 And again, I haven't seen any proposal from any
12 defendant, and that might just be me, on what the fact sheet
13 for losartan/irbesartan should look like other than changing
14 the word "valsartan" to "losartan and irbesartan," which
15 hopefully it will be something that quick the parties can
16 agree to.

17 MR. GEOPPINGER: Your Honor, if I might clarify, I'm
18 not suggesting we wouldn't do custodial discovery. And by
19 that, I'm just saying, at the pace at which we had
20 contemplated it on a swings-both-ways scheduling order, I
21 think we need to go back and revisit that.

22 And it will be our position, I don't think this is
23 controversial at all, that to the extent, you know, we're
24 doing custodial discovery of valsartan, we should just do
25 losartan and irbesartan at the same time. That's -- you know,

1 e-discovery is an expense. We certainly want to do all of
2 that together. We don't want to be in two tracks or having to
3 run -- if we can have a set of search terms that covers all of
4 that, we'd certainly want to do that as opposed to two
5 separate search -- set of search terms run at different times
6 and all that kind of stuff.

7 So that's -- you know, it's not a substantive issue,
8 that's just a timing issue with respect to where we are at and
9 where we contemplated being at in a swings-both-ways
10 scheduling order as opposed to the let's get the fact sheet
11 done and go from there.

12 So I guess at this point, my -- my proposal would be
13 for the parties to -- and as I said, there will be others
14 involved, to get the fact sheet in place. And us and
15 Ms. Burrows and Mr. Stanoch can go back and kind of start -- I
16 guess it won't be completely starting from scratch, but really
17 talk about how the schedule looks when it's, you know, for all
18 of us, not just for the wholesalers.

19 SPECIAL MASTER VANASKIE: Right.

20 MR. STANOCH: And, Your Honor, most of us will be
21 together next week too. And it's only a few days, but
22 hopefully that will give time to coalesce ideas and thoughts
23 and views on both sides. And maybe we can surprise ourselves
24 and even have some ideas proactively when we come in.

25 SPECIAL MASTER VANASKIE: Well, I'd like to see you

1 hammer out the fact sheets, get that accomplished.

2 I'd like to get a report on that -- on the status of
3 that at our call next week, because you've been down this road
4 before, so I'm hoping that lessons learned will inform the
5 results here.

6 Certainly Mr. Geoppinger is not going to be precluded
7 from engaging in custodial discovery of the TPPs. He's going
8 to get that.

9 But let's get through the fact sheets, let's get that
10 set up. And then we can set up a schedule for the rest of the
11 matter, service of RFPs or draft RFPs, and what you can hammer
12 out in negotiations, submit to me whatever remains in dispute,
13 and that's all fine. But we have to get over this hump right
14 now that -- and I understand why you're frustrated,
15 Mr. Geoppinger, because you are engaging in that discovery or
16 that production. I'm not sure what to do about that. We
17 could defer that or stay that until we get the fact sheet
18 process completed.

19 My understanding was that you get these fact sheets
20 and then you fill in the gaps with RFPs and maybe 30(b)(6)
21 depositions. That seems to me the process we should stay
22 with. Maybe things got off track a little bit with CMO 32. I
23 don't know. But let's try to get it back on track in terms of
24 this process of getting the fact sheets negotiated and
25 responded to, and then we'll fill in the gaps with other

1 discovery.

2 I don't want anybody to be -- I understand the
3 spectre of waiver, and I've made that decision a couple of
4 times now. And I understand the -- I understand the problem
5 and the dilemma perhaps faced by the wholesalers. And I don't
6 want to have anybody waive anything, but I do want to move
7 forward. And I think we're not moving forward right now.

8 So if we can hammer out what the components of the
9 fact sheets will be, you know, I know for irbesartan and
10 losartan you're going to have to involve the other categories
11 of defendants and get them on board with this too so we can
12 move forward.

13 Now, if I'm misunderstanding something in that
14 respect, please let me know, but it seems to me that they all
15 should be at this table.

16 MR. STANOCH: I think you're -- I have nothing to add
17 to that, Your Honor. And we're certainly committed to move
18 promptly with any and all defendants to keep this going
19 quickly. We're not looking, you know, to stall it. We just
20 want to make sure it proceeds in an orderly, unified fashion,
21 the way we've been doing it for a while. But we're committed
22 to working as quickly as we need to.

23 SPECIAL MASTER VANASKIE: All right. So is there
24 anything else, Mr. Geoppinger?

25 MR. GEOPPINGER: No. I'll report back to the other

1 defendants what's been discussed, and we'll try to get that
2 coordinated and move forward on that so all the
3 defendants are --

4 SPECIAL MASTER VANASKIE: We'll get a report in our
5 call next week on where things stand.

6 MR. GEOPPINGER: I believe we have a conference with
7 the Court in person next week.

8 SPECIAL MASTER VANASKIE: Yeah, okay.

9 MR. STANOCH: Yes.

10 SPECIAL MASTER VANASKIE: With the conference. I
11 didn't realize it's in person. So I'll have to get on the
12 Turnpike.

13 MR. GEOPPINGER: Yes. We'll be there on Tuesday.

14 SPECIAL MASTER VANASKIE: On Tuesday, okay.

15 MR. GEOPPINGER: And I will do my best to get
16 everyone corralled.

17 I'll tell you, Your Honor, just historically
18 speaking, the fact sheets actually were -- that were done in
19 valsartan were done even before the wholesalers -- I think
20 very shortly before the wholesalers even got in the case.

21 SPECIAL MASTER VANASKIE: Yes.

22 MR. GEOPPINGER: So, you know, I wasn't the point
23 person on those back then, but I will communicate with all the
24 defendants, let them know what we discussed today, and we'll
25 make as much progress and report where we're at as soon as --

1 you know, on Tuesday, as soon as we can.

2 SPECIAL MASTER VANASKIE: All right.

3 MR. GEOPPINGER: And I think with respect to the
4 plaintiffs and our discovery, we have -- we already have a
5 meet and confer set up on Monday, so we can talk amongst
6 ourselves about what all that looks like and what it might
7 look like going forward.

8 But it's my understanding that the orders we
9 submitted, I sent previously, is not going to be entered by
10 the Court, so that we're sort of back to working on a schedule
11 for us as well, along with the fact sheet schedule.

12 SPECIAL MASTER VANASKIE: Yes, you are.

13 I mean, there were items that were agreed to or were
14 consistent on the two proposals, so there is some
15 understanding. So, for example, my notes indicate that
16 there's agreement that the wholesalers shall substantially
17 complete their document production for losartan, irbesartan
18 and valsartan custodial discovery by March 11th of 2024.
19 So --

20 MR. GEOPPINGER: I think the plaintiffs' date was
21 agreed to as well, Your Honor, on that point.

22 SPECIAL MASTER VANASKIE: Exactly, yeah.

23 MR. GEOPPINGER: So we've got those two down.

24 SPECIAL MASTER VANASKIE: And then you also have the
25 dates of March 25th, April 2nd, April 11th. Those were all

1 agreed to as well, were the same.

2 MR. STANOCH: Your Honor, we can talk about that. We
3 have a call scheduled with Mr. Geoppinger and my team on
4 Monday. We can work through that, and if there's dates.

5 SPECIAL MASTER VANASKIE: Okay, okay.

6 MR. STANOCH: And hopefully some of what -- I have no
7 problem saying this. Some of what wholesalers want by way of
8 supplemental RFPs, maybe that can find its way into the
9 losartan and irbesartan fact sheet. So I think we can work
10 through this, and we'll work through the dates.

11 And I'm going to make sure my oven doesn't blow up
12 right now, Judge, and Ms. Burrows is going to take over.

13 SPECIAL MASTER VANASKIE: All right. Go check on
14 your oven.

15 MR. GEOPPINGER: I think working those into the fact
16 sheet -- the fact sheet up front would be certainly something
17 the wholesalers are going to be very interested in doing.

18 SPECIAL MASTER VANASKIE: Okay. I think that would
19 be great. I think why make it supplemental. Let's get it
20 right in the fact sheet and get that information to you.

21 The other issue I have -- I guess that's it on that
22 issue. Report next week on this.

23 And then we have the issue that's been raised with
24 respect to smartphone app discovery.

25 This is not your issue. And that's from the

1 manufacturers. I don't know if I have anybody on the phone to
2 address that, on the Zoom.

3 MS. GOLDENBERG: This is Marlene Goldenberg. I --
4 oh, good, George is here. Never mind.

5 MR. WILLIAMSON: Yeah, Your Honor, my understanding
6 was that we were going to brief this issue. It would be in
7 our submission I believe tomorrow. And then to the extent
8 Your Honor wanted to hear further argument or further briefing
9 on it, we could do that at some later point.

10 SPECIAL MASTER VANASKIE: Yeah. I thought what we
11 could do is simply set up a schedule of a date by which a
12 motion to compel should be filed and set up the briefing issue
13 as whether or not you're entitled to discovery.

14 I know it involves WeChat. It involves discovery of
15 information that would be on smartphones of individuals at
16 ZHP.

17 MR. WILLIAMSON: That's right, Your Honor. And if
18 Your Honor is asking for a briefing schedule, then we can put
19 our heads together with defense counsel and work that out,
20 unless Your Honor has something you want to propose today.

21 SPECIAL MASTER VANASKIE: No. Why don't you work it
22 out. I'd rather you work it out rather than me imposing
23 something. I'm prepared to. But we're getting together next
24 Tuesday, I guess it is.

25 MR. WILLIAMSON: Okay.

1 SPECIAL MASTER VANASKIE: So I would hope that you'd
2 have a schedule proposed by then.

3 MR. WILLIAMSON: Yeah, I think we can do that.

4 SPECIAL MASTER VANASKIE: All right.

5 MR. WILLIAMSON: Thank you, Your Honor.

6 SPECIAL MASTER VANASKIE: Is there anything else to
7 discuss today?

8 MR. GEOPPINGER: Nothing from the wholesalers, Your
9 Honor.

10 MS. BURROWS: Nothing from the plaintiffs regarding
11 these issues, Your Honor. Thank you for your time today.

12 SPECIAL MASTER VANASKIE: All right. Thank you all
13 very much. We'll see you next week.

14 (Proceedings concluded at 2:56 p.m.)

15 I certify that the foregoing is a correct transcript
16 from the record of proceedings in the above-entitled matter.

17 /S/ Ann Marie Mitchell 8th day of September, 2023
Court Reporter/Transcriber Date

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